AmGeneral Insurance Bhd v Iskandar bin Mohd Nuli

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOW-02(NCVC)(W)-2145–12 OF 2014
ALIZATUL KHAIR, ABANG ISKANDAR AND VERNON ONG JJCA
16 DECEMBER 2015

Insurance — Motor insurance — Policy of insurance — Claim under insurance police — Insurer denied liability — Accident occurred in Singapore and action instituted in Singapore — Whether insurer liable to satisfy judgment entered by Malaysian passenger — Whether insurer waived right to deny liability on policy — Whether insurer entitled to indemnity

The owner of a motorcar ('Shahrul') had taken out a motorcar insurance policy ('the policy') on the motorcar with the plaintiff. Shahrul had loaned the motorcar to the second defendant to drive into Singapore with the latter's wife ('Zuraini') as a passenger. Unfortunately, the motorcar was involved in a road traffic accident, causing Zuraini to suffer injuries, loss and damages. Zuraini instituted an action for negligence in the Singapore High Court ('the Singapore suit') against the second defendant as the driver of the motorcar and the plaintiff was notified of the claim. The plaintiff then instructed their solicitors in Singapore, Global Alliance LLC ('GLA') to enter appearance for the second defendant. However, GLA denied liability under the policy. The second defendant argued that by law and through contractual obligations with the plaintiff, he was covered under the policy and was entitled to legal representation. At the same time, the plaintiff claimed in the Kuala Lumpur High Court for a declaration that the plaintiff was not liable to satisfy any judgment that may be entered by a Malaysian passenger who was injured in a road traffic accident in Singapore on the ground that the insurance policy for the car did not cover passenger liability. The High Court dismissed the plaintiff's claim. Hence, the present appeal. The plaintiff sought declarations that the plaintiff was not legally liable under the policy for the injuries, loss and damages suffered by Zuraini ('declaration B'); and if the plaintiff was held directly or indirectly liable to satisfy any judgment or part thereof obtained by Zuraini against the second defendant in the Singapore suit, the plaintiff was entitled to an indemnity from the first and/or second defendant ('declaration D').

Held, allowing the appeal with costs:

(1) The plaintiff had from the very outset made it clear to the second defendant that they were acting without prejudice to their right to deny policy liability. There was a commonality in the interest of the plaintiff

and the second defendant, which was to avoid the possibility of judgment by default and to argue that the driver of the other vehicle was solely or mainly liable for the accident. The High Court judge had erred when it held that the plaintiff had by its conduct waived its right to deny liability on the policy and was estopped from maintaining the action. There was no conflict of interest in acting for both insured and insurers (see paras 47 & 49).

(2) Under the agreements entered into between insurers in Malaysia and the Motor Insurers Bureau Singapore ('MIBS'), the Malaysian insurer of the motor vehicle is obliged to reimburse the MIBS if MIBS pays on any claim due to the negligent use of Malaysian registered motor vehicles in Singapore. Such an agreement between a Malaysian insurer and the MIBS is referred to as the special agreement (see para 37).

(3) The plaintiff's liability under the special agreement only arises if Zuraini obtained judgment on her claim against the second defendant in the Singapore suit; and MIBS pays on the judgment sum. However, that was not the issue in this appeal. The special agreement herein did not have any effect on the plaintiff's rights under the policy; the special agreement did not affect or alter the rights under the policy inter se the plaintiff qua insurer, Shahrul qua insured and the second defendant qua authorised driver. The exclusion of third party coverage for passengers other than employees under the policy was preserved. Declaration B was allowed (see paras 57–58).

(4) The plaintiff was entitled to an indemnity from the second defendant. Declaration D was allowed. The question of whether the second defendant was liable to indemnify the plaintiff from any such liability should be determined in accordance to the terms of the policy. Under the policy, the plaintiff qua insurer would treat the insured's authorised driver as though he was the insured. It was also provided that the authorised driver was required to comply with the terms of the policy insofar as they were applicable to him. Accordingly, the words 'you, your, yourself, policyholder and insured' in the policy should be construed to be read, as far as they could apply beyond the insured, as meaning the insured or any other person who was insured under the policy (see paras 63, 70 & 65).

[Bahasa Malaysia summary

Pemilik motokar ('Shahrul') telah mengambil polisi insurans motokar ('polisi') ke atas kereta dengan plaintif. Shahrul telah meminjamkan motokar tersebut kepada defendan kedua untuk memandu ke Singapura dengan isterinya ('Zuraini') sebagai penumpang. Malangnya, motokar telah terlibat dalam kemalangan jalanraya, menyebabkan Zuraini mengalami kecederaan serius, kerosakan dan ganti rugi. Zuraini memulakan tindakan untuk kecuaian di Mahkamah Tinggi Singapura ('tindakan Singapura') terhadap defendan kedua

sebagai pemandu motokar dan plaintif diberitahu mengenai tuntutan tersebut. Plaintif kemudiannya mengarahkan peguam mereka di Singapura, Global Alliance LLC ('GLA') untuk memasukkan kehadiran bagi defendan kedua. Walau bagaimanapun, GLA menafikan liabiliti di bawah polisi tersebut. Defendan kedua berhujah bahawa mengikut undang-undang dan melalui tanggungjawab kontraktual dengan plaintif, dia dilindungi di bawah polisi tersebut dan berhak kepada representasi undang-undang. Pada masa yang sama, plaintif menuntut di Mahkamah Tinggi Kuala Lumpur bagi perisytiharan bahawa plaintif tidak bertanggungjawab untuk memenuhi apa-apa penghakiman yang mungkin dimasukkan oleh penumpang rakyat Malaysia yang cedera dalam kemalangan jalanraya di Singapura atas alasan bahawa polisi insurans untuk kereta tidak melindungi liabiliti penumpang. Mahkamah Tinggi menolak tuntutan plaintif. Maka, rayuan ini. Plaintif memohon perisytiharan bahawa plaintif tidak bertanggungjawab secara undang-undang di bawah polisi untuk kecederaan, kerosakan dan ganti rugi yang dialami oleh Zuraini ('Perisytiharan B'); dan jika plaintif bertanggungan secara langsung atau tidak langsung untuk memenuhi apa-apa penghakiman atau sebahagian daripadanya yang diperolehi terhadap defendan kedua di dalam tindakan Singapura, plaintif berhak kepada indemniti daripada defendan pertama dan/atau kedua ('Perisytiharan D').

Diputuskan, membenarkan rayuan dengan kos:

(1) Plaintif telah dari awal lagi menyatakan dengan jelas kepada defendan kedua bahawa mereka bertindak tanpa prejudis kepada hak mereka untuk menafikan liabiliti polisi. Terdapat persamaan dalam kepentingan plaintif dan defendan kedua, yang mana untuk mengelak kemungkinan penghakiman ingkar dan untuk berhujah bahawa pemandu kenderaan yang satu lagi satu-satunya bertanggungjawab untuk kemalangan tersebut. Hakim Mahkamah Tinggi telah tersilap apabila ia memutuskan bahawa plaintif telah melalui tindakannya mengetepikan haknya untuk menafikan liabiliti atas polisi dan diestop daripada mengekalkan tindakan tersebut. Tidak terdapat konflik kepentingan dalam bertindak untuk kedua-dua pengambil insurans dan syarikat insurans (lihat perenggan 47 & 49).

(2) Di bawah perjanjian yang dimasuki antara syarikat insurans di Malaysia dan Motor Insurers Bureau Singapore ('MIBS'), syarikat insurans kenderaan Malaysia adalah bertanggungjawab untuk membayar balik kepada MIBS jika MIBS membayar apa-apa tuntutan akibat kecuaian penggunaan kenderaan berdaftar Malaysia di Singapura. Perjanjian sedemikian di antara syarikat insurans dan MIBS dirujuk sebagai perjanjian khas (lihat perenggan 37).

(3) Liabiliti plaintiff di bawah perjanjian khas hanya berbangkit jika Zuraini memperolehi penghakiman atas tuntutannya terhadap defendan kedua

dalam tindakan Singapura; dan MIBS membayar jumlah penghakiman. Walau bagaimanapun ia bukan isu dalam rayuan ini. Perjanjian khas di sini tidak mempunyai apa-apa kesan ke atas hak plaintif di bawah polisi tersebut; perjanjian khas tidak memberi kesan atau mengubah hak di bawah polisi *inter se* plaintif sebagai syarikat insurans, Shahrul sebagai pengambil insurans dan defendan kedua sebagai pemandu yang diberikan kebenaran. Pengecualian perlindungan pihak ketiga untuk penumpang-penumpang selain daripada pekerja di bawah polisi adalah dikekalkan. Perisytiharan B dibenarkan (lihat perenggan 57–58).

(4) Plaintif adalah berhak kepada indemniti daripada defendan kedua. Perisytiharan D dibenarkan. Persoalan sama ada defendan kedua bertanggungjawab untuk membayar plaintif daripada apa-apa liabiliti sedemikian patut ditentukan mengikut kepada terma-terma polisi. Di bawah polisi, plaintif sebagai syarikat insurans akan menganggap pemandu yang diberi kebenaran sebagai pengambil insurans. Ia juga diperuntukkan bahawa pemandu yang diberikan kebenaran dikehendaki mematuhi terma-terma polisi setakat yang ia diguna pakai terhadapnya. Oleh itu, perkataan 'you, your, yourself, policyholder and insured' di dalam polisi patut ditafsir untuk dibaca, setakat mana ia diguna pakai melampaui pengambil insurans, bermaksud pengambil insurans atau mana-mana orang lain yang dinsuranskan di bawah polisi tersebut (lihat perenggan 63, 70 & 65).]

Notes

For cases on policy of insurance, see 8(1) *Mallal's Digest* (5th Ed, 2015) paras 445–448.

Cases referred to

Ambank (M) Bhd (formerly known as Arab-Malaysia Bank Bhd) v Luqman Kamil bin Mohd Don [2012] 3 MLJ 1, FC (refd)

Austin v Zurich General Accident & Liability Insurance Co Ltd [1945] 1 All ER 316, CA (refd)

Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd [1995] 3 MLJ 331, FC (refd)

Central Lorry Service Co Sdn Bhd v The American Insurance Co [1981] 2 MLJ 40 (refd)

Chong Kok Hwa v Taisho Marine & Fire Insurance Co Ltd [1977] 1 MLJ 244 (refd)

Cosmic Insurance Corporation Ltd v Ong Kah Hoe (t/a Ong Kah Hoe Industrial Supplies) & Anor [1998] 1 SLR 1044, HC (refd)

Dato' Othman bin Hashim v KKW Auto Centre [2012] 5 MLJ 756, HC (refd)

Digby v General Accident Fire and Life Assurance Corporation Ltd [1942] 2 All ER 319, HL (distd)

Malaysia Land Properties Sdn Bhd v Waldorf & Windsor Joint Management Body [2014] 3 MLJ 467, CA (refd)
Manap bin Mat v General Accident Fire & Life Assurance Corp Ltd [1972 - 1974] 1 SLR 375; [1971] SGCA 1, CA (refd)
Minister of Energy, Water and Communications & Anor v Malaysian Trade Union Congress & Ors [2013] 1 MLJ 61, CA (refd)
Musamat Bhagwati v Banarsi Das, Privy Council Appeal No 91 of 1926, PC (refd)
Oriental Fire and General Insurance Co Ltd v Cheuk Ma Yee [1980] HKCA 291 (refd)
PR SP Periakaruppan Chettiar v Yong Book Fong [1972] 1 MLJ 160, FC (refd)
Pacific & Orient Insurance Co Bhd (formerly known as Pacific & Orient Insurance Co Sdn Bhd) v Motor Insurers' Bureau of Singapore [2013] 1 SLR 341, HC (refd)
Pacific & Orient Insurance Co Bhd v Goh Cheng Loong & 2 Ors [2013] 1 LNS 1002, HC (refd)
Pacific & Orient Insurance Co Sdn Bhd v Cheng Chor Tong & Ors [2006] 5 MLJ 431, HC (refd)
RHB Bank Bhd (substituting Kwong Yik Bank Bhd) v Kwan Chew Holdings Sdn Bhd [2010] 2 MLJ 188, FC (refd)
Salijah bte Ab Lateh v Mohd Irwan bin Abdullah Teo [1996] 2 SLR 201, CA (refd)
Soole v Royal Insurance Co Ltd [1971] 2 Lloyd's Rep 332, HC (refd)
The Oriental Fire & General Insurance Co Ltd v Cheuk Ma Yee [1980] HKCA 291; [1980] HKC 32, CA (refd)
Unilever (M) Holdings Sdn Bhd v So Lai @ Soo Boon Lai & Anor [2015] 4 MLJ 326; [2015] 3 CLJ 1, FC (refd)
Veronica Lee Ha Ling & Ors v Maxisegar Sdn Bhd [2011] 2 MLJ 141, FC (refd)

Legislation referred to

Contracts Act 1950 s 70
Contracts Act 1872 [IND] s 69
Rules of Court 2012 O 15 r 6

Appeal from: Civil Suit No 22NCVC-24–01 of 2014 (High Court, Kuala Lumpur).

WSW Davidson (Rueben Mathiavaranam, Lim Qi Si, Soh Jing Han and G Navinthar with him) (TH Liew & Partners) for the appellant.
Ariff Rozhan (William Lim and Johnson Lim with him) (Wajdi Shamsul & Co) for the respondent.

Vernon Ong JCA:

INTRODUCTION

[1] This appeal is against the decision of the Kuala Lumpur High Court dismissing the appellant's claim for, inter alia, a declaration that the appellant is not liable to satisfy any judgment that may be entered by a Malaysian passenger who was injured in a road traffic accident in Singapore against the respondent in a Singapore suit (commenced as a result of a road traffic accident in Singapore), on the ground that the insurance policy for the car driven by the respondent which was issued by the appellant does not cover passenger liability.

[2] In this judgment, the appellant and the respondent shall be referred to as the plaintiff and the second defendant respectively.

BRIEF ACCOUNT OF THE SALIENT FACTS

[3] On 26 November 2010, the owner ('Shahrul') of a motorcar No WTG 4225 ('the car') took out a motor insurance policy ('the policy') on the car with the plaintiff for the period from 26 November 2010 to 25 November 2011.

[4] On 13 December 2010, Shahrul loaned the car to the second defendant to drive into Singapore with the second defendant's wife ('Zuraini') as a passenger. The car was involved in a road traffic accident with a crane truck and Zuraini suffered injuries, loss and damage.

[5] On 31 January 2013, Zuraini instituted an action for negligence in the High Court of Singapore ('the Singapore suit') against the second defendant as the driver of the car and also the driver of the crane truck.

[6] The plaintiff was notified of the claim and instructed their Singapore solicitors, Global Alliance LLC ('GLA') to enter appearance for the second defendant.

[7] On 27 September 2013, GLA wrote to the second defendant denying liability under the policy on the grounds that the policy did not cover passenger liability. The plaintiff also gave the second defendant the option of appointing his own solicitors to take over the defence or for GLA to continue to defend the Singapore suit with all rights reserved. This was followed by two reminders dated 17 December 2013 and 20 December 2013.

[8] On 31 December 2013, the second defendant wrote to GLA asserting that by law and through contractual obligations with the plaintiff, he was covered under the policy and was entitled to legal representation.

[9] Meanwhile, GLA continued to represent the second defendant in the Singapore suit until 5 May 2014 when the solicitors appointed by the second defendant took over the conduct of the second defendant's defence.

[10] The proceedings in the Singapore suit are still on-going and no judgment on liability has yet been given.

FINDINGS OF THE HIGH COURT

[11] The findings of the learned judge may be summarised as follows:

(a) the plaintiff is bound by the laws in Singapore to meet the passenger liability claim notwithstanding the lack of premiums for passenger liability cover;

(b) the plaintiff has waived its right to deny liability on the policy due to the conduct of the plaintiff having appointed solicitors to defend the second defendant in the Singapore suit. As such, the plaintiff is estopped from maintaining the action;

(c) on the facts, the plaintiff has assumed the liability against the second defendant to satisfy any judgment that may be entered by Zuraini in the Singapore suit;

(d) the plaintiff is liable to satisfy any judgment for damages or part thereof obtained by Zuraini in the Singapore suit against the second defendant; and

(e) the second defendant is not in breach of the contract of insurance represented by the policy and the plaintiff is not entitled to an indemnity from the second defendant.

THE PLAINTIFF'S SUBMISSION

[12] Notwithstanding that the learned judge dismissed the plaintiff's claim for the four declarations sought, learned counsel for the plaintiff confined the appeal to only two of the four declarations originally sought at the High Court. The two declarations in question are:

> (B) A declaration that the Plaintiff is not legally liable under the policy of insurance CVP-V3697164-33 for motorcar No. WTG 4225 to the First Defendant and/or the Second Defendant, for the injuries, loss and damages suffered by one Zuraini binti Mohamed, who was carried as a passenger in the said car on 13 December 2010 and which car was involved in an accident in Singapore on that date:
>
> (D) A declaration that if the Plaintiff is held directly or indirectly liable to satisfy any judgment or part thereof obtained by Zuraini binti Mohamed

against the Second Defendant in the Singapore Suit, the Plaintiff is entitled to an indemnity from the First and/or Second Defendant.

[13] Even though the plaintiff is not pursuing declaration A, learned counsel intimated to the court that they do not accept the reasons given by learned judge for dismissing declaration A and that they wish to preserve all rights to argue on the issue if and when it arises at a later date. (Declaration A relates to the plaintiff's stand that they are not liable to satisfy any judgment or part thereof obtained by Zuraini in the Singapore suit against the second defendant).

[14] Learned counsel argued that all the five conditions for the granting of a declaratory relief have been satisfied (O 15 r 6 of the Rules of Court 2012 *Salijah bte Ab Lateh v Mohd Irwan bin Abdullah Teo* [1996] 2 SLR 201 Lord Woolf and Jeremy Woolf, *The Declaratory Judgment* (3rd Ed, Sweet & Maxwell 2002) at p 163). The second defendant's reply challenging the plaintiff's denial of liability was made on 31 December 2013. Therefore, when the plaintiff's suit in the Kuala Lumpur High Court was filed on 22 January 2014, there was already a live issue which solely concerns the plaintiff and the second defendant on policy liability. The granting of the declaration would serve a useful purpose as it will be helpful to the parties and to the public.

[15] Learned counsel referred to the policy which he argued is a typical motor insurance policy. The policy covers liability to drivers driving with the consent of the insured (Shahrul). However, section B and endorsement 100 to the policy expressly exclude legal liability to passengers travelling in the car other than in the course of employment; which employment exception has no application in this case.

[16] Learned counsel argued that at any rate, pursuant to para 2 of the policy under the sub-heading 'AVOIDANCE OF CERTAIN TERMS AND RIGHTS OF RECOVERY' of SECTION B, in the event that the plaintiff is compelled to pay up to Zuraini the first defendant is liable to indemnify the plaintiff. For completeness, paras 1 and 2 are reproduced below:

> 1 Your rights or that of any other person to recover indemnity by virtue of the Legislation or Agreement executed between the Minister of Transport for the Government of Malaysia and the Motor Insurers' Bureau of West Malaysia on March 30, 1992 or the Agreement executed between the Government of Singapore and the Motor Insurers' Bureau of Singapore on February 22, 1975 shall not be affected in any way.
>
> 2 However, in the event that We are liable to pay any monies as a result of the said Legislation or Agreement which We would not otherwise have been liable to pay, You shall repay to Us such monies paid by Us. (Emphasis supplied)

[17] Under the policy, the word 'You' is defined as '... refer to the policy holder and/or the Insured'. As such, it was argued that the word 'Insured' has a wider meaning so as to include the authorised driver. As such, the plaintiff had the right to seek an indemnity from the first defendant under the policy.

[18] In support of his proposition, learned counsel referred to a memorandum of an agreement between the Minister of Finance of Singapore and the Motor Insurers' Bureau of Singapore (MIBS) dated 22 February 1975, in particular to para 4 under 'Part II: Compensation of Victims of Uninsured Drivers' of the notes on the said agreement which reads as follows:

> 4 ... This arrangement is, of course, without prejudice to any rights insurers may have against their policy holders and to avoid any possible misapprehension, it is emphasised that there is nothing in the Agreement affecting any obligations imposed on a policy holder by his policy. Policy holders are not released from their contractual obligations to their insurers although the scheme protects THIRD PARTY VICTIMS from the consequences of failure to observe them. ...

[19] Learned counsel also referred to para 3 of a principal officer's circular No 187 of 1991 dated 2 September 1991 issued by the General Insurance Association of Malaysia ('PIAM') which provides as follows:

> 3 In the event your policyholders disagree to include the passenger liability cover to their policies, insurers have a right to seek reimbursement from your policyholder for the payment of passenger liability which arises in Singapore.

[20] The next issue relates to the weight to be given to three circulars issued by PIAM in which PIAM expressed its views on the effects of the compulsory arrangements made in Singapore and offers advice and guidance. Learned counsel argued that the learned judge erred in accepting the second defendant's argument that the PIAM circulars having been included in Part A of the bundle of documents signifying that both authenticity and content is admitted, that therefore the correctness of all propositions of law and interpretations of laws or contracts stated therein must be accepted. Learned counsel submitted that the admission as to content must apply only to the facts and cannot apply to interpretation of documents or issues of law (*Unilever (M) Holdings Sdn Bhd v So Lai @ Soo Boon Lai & Anor* [2015] 4 MLJ 326; [2015] 3 CLJ 1 (FC)). The learned judge also applied the same reasoning to the special agreement in addition to the PIAM circulars. It was therefore submitted that to the extent that the learned judge based her decision on the contents of these documents, her findings cannot stand.

[21] Learned counsel also argued that estoppel did not apply to preclude the plaintiff's entitlement to the declarations sought. Firstly, the plaintiff had made it clear to the second defendant from the outset that they were doing so without

prejudice to their right to deny policy liability; and that the second defendant had the option of appointing his own solicitors or letting GLA continue to act with reservation of the plaintiff's rights to deny liability under the policy. GLA did continue to act until 5 May 2014 when it discharged itself as the second defendant refused to agree to GLA's position that their continued involvement was without prejudice to liability.

[22] Secondly, learned counsel argued that there is no evidence that the second defendant has in any way been prejudiced in the Singapore suit proceedings; as such the element of detriment which is a necessary element of estoppel is absent (*Pacific & Orient Insurance Co Sdn Bhd v Cheng Chor Tong & Ors* [2006] 5 MLJ 431).

[23] Thirdly, learned counsel argued that the plaintiff was acting in the interests of the insured when acting for the insured. Where there is a common interest then there is no conflict of interest in acting for both insured and insurers. The common interest here was to avoid the possibility of judgment by default and to press the case in the Singapore suit that the driver of the other vehicle was solely or alternatively mainly liable for the accident. The question of whether the plaintiff did express a reservation of rights prior to 27 September 2013 is an issue on contested facts but it is not a determining factor in this case. Therefore, the assumption of proceedings by the plaintiff did not necessarily debar the plaintiff from subsequently denying liability (*Soole v Royal Insurance Co Ltd* [1971] 2 Lloyd's Rep 332; *Oriental Fire and General Insurance Co Ltd v Cheuk Ma Yee* [1980] HKCA 291; *MacGillvray on Insurance Law* (10th Ed, Sweet and Maxwell 2003); *Chong Kok Hwa v Taisho Marine & Fire Insurance Co Ltd* [1977] 1 MLJ 244; *Poh Chu Chai, Law of Insurance* (3rd Ed).

[24] In answer to the second defendant's assertion disclaiming any knowledge of the policy's non-coverage of passenger liability, learned counsel argued that the second defendant must take the policy and cannot select those parts which suit him (*Austin v Zurich General Accident & Liability Insurance Co Ltd* [1945] 1 All ER 316 (CA)).

[25] In regard to declaration D, learned counsel submitted that the plaintiff's right to recover an indemnity from the second defendant can only arise if the plaintiff is found liable to satisfy any judgment obtained by Zuraini in the Singapore suit against the second defendant. The plaintiff's right of recovery is covered by the policy which contains a specific contractual obligation to repay by the insured or authorised driver (see para 15 above). This right is also protected under the compulsory arrangements including cl 4 of the domestic agreement. Further, the second defendant being the authorised driver becomes an insured person under the policy and with the rights to sue and be sued under the policy. This must include the right of the insurer which is

expressly given by the policy to recover monies which they are required to pay pursuant to legislation (*Digby v General Accident Fire and Life Assurance Corporation Ltd* [1942] 2 All ER 319 (HL)*Manap bin Mat v General Accident Fire & Life Assurance Corp Ltd* [1972 - 1974] 1 SLR 375; [1971] SGCA 1 (CA) *Dato' Othman bin Hashim v KKW Auto Centre* [2012] 5 MLJ 756 at p 773).

[26] Further and in the alternative, learned counsel argued that the plaintiff is entitled to indemnity against the second defendant under the law of restitution under the common law (*Cosmic Insurance Corporation Ltd v Ong Kah Hoe (t/a Ong Kah Hoe Industrial Supplies) & Anor* [1998] 1 SLR 1044; *Goff and Jones, The Law of Restitution* (5th Ed, Sweet and Maxwell 1998)). Further, the common law position is codified in s 70 of the Contracts Act 1950 which provides for the reimbursement of person paying money due by another, in payment of which he is interested (*PR SP Periakiaruppan Chettiar v Yong Book Fong* [1972] 1 MLJ 160 (FC); *Low Weng Tchung, The Law of Restitution and Unjust Enrichment in Malaysia* (LexisNexis 2015)).

[27] In the alternative, the plaintiff took the argument that the right to reimbursement under declaration D arises under the law of restitution (*Cosmic Insurance Corporation Ltd v Ong Kah Hoe (t/a Ong Kah Hoe Industrial Supplies) & Anor* [1998] 1 SLR 1044; *Goff and Jones, The Law of Restitution* (5th Ed). The common law position is codified in s 70 of the Contracts Act 1950 which is in pari materia with s 69 of the Indian Contracts Act 1872 which embodies the doctrine of unjust enrichment. Section 70 of the Contracts Act 1950 goes beyond the common law position in that it appears to encompass cases where there is no imminent or immediate compulsion to pay (*Musamat Bhagwati v Banarsi Das,* Privy Council Appeal No 91 of 1926 *PR SP Periakaruppan Chettiar v Yong Book Fong* [1972] 1 MLJ 160 (FC)). As such, it was submitted that the plaintiff has a clear right of restitution under s 70 of the Contracts Act 1950 in the event of judgment in the Singapore suit being awarded against the second defendant and the plaintiff is compelled to pay up under the compulsory arrangements.

THE SECOND DEFENDANT'S SUBMISSION

[28] Learned counsel argued that the plaintiff is obliged to satisfy the judgment in the Singapore suit as the plaintiff is bound by the special agreement with Singapore and by virtue of the PIAM circulars. This fact has been admitted to by the plaintiff's own witnesses (SP2 and SP3) under cross-examination. As this is the plaintiff's accepted position, it is not possible for the plaintiff to deny liability against the claim by Zuraini, whether under the policy or under the special agreement.

[29] Even if the plaintiff is not liable under the policy, the plaintiff is still liable under the special agreement. In fact, para 1 under the sub-heading 'AVOIDANCE OF CERTAIN TERMS AND RIGHTS OF RECOVERY' of SECTION B in the policy refers to the special agreement (see para 15 above). Therefore, it was submitted that the policy and the special agreement are intrinsically linked because although liability stems largely from the special agreement, the special agreement cannot kick in without the policy.

[30] In reply to the plaintiff's argument on estoppel, learned counsel argued that the fact that the policy and the special agreement are intrinsically linked is also the basis for the learned judge to find estoppel applied against the plaintiff; so that the plaintiff is estopped from denying liability because the plaintiff had conducted itself in such a way as to create an expectation in the second defendant that the liability arising from Zuraini's claim would be covered by passenger liability under the policy. Reference was also made to the plaintiff's solicitors letter dated 27 September 2013 showing that the plaintiff already knew of Singapore court decisions holding that Malaysian insurers would be liable for passenger liability even though a policy does not provide for passenger cover. Notwithstanding the aforesaid, the plaintiff went on to defend the action on behalf of the second defendant. The question of whether or not there was estoppel by conduct is a fact based issue. In this case, the plaintiff had through GLA provided legal representation to the second defendant for eight months. By its conduct in having appointed solicitors to conduct the defence on behalf of the second defendant in the Singapore suit, the plaintiff has waived its right to deny liability on the policy. Therefore, the doctrine of estoppel would operate to bar the plaintiff from doing so (*Pacific & Orient Insurance Co Bhd v Goh Cheng Loong & 2 Ors* [2013] 1 LNS 1002). Further, the detriment element does not form part of the doctrine of estoppel (*Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd* [1995] 3 MLJ 331 (FC)).

[31] In reply to the plaintiff's arguments on declaration D, learned counsel submitted that the plaintiff's liability to compensate Zuraini arises under the special agreement; and the special agreement does not give any right to the plaintiff to claim indemnity against the first defendant. At any rate, the policy does not give the plaintiff the right to an indemnity. The word 'You' in para 2 under the sub-heading 'AVOIDANCE OF CERTAIN TERMS AND RIGHTS OF RECOVERY' of SECTION B in the policy refers to the policy holder or insured and not the authorised driver. The policy makes a clear distinction between 'You or Your authorised driver' in (a) para 1 under the sub-heading 'LIABILITY TO THIRD PARTIES' of Section B; and (b) para 2 under the sub-heading 'GENERAL EXCEPTIONS – THESE APPLY TO THE WHOLE POLICY' of Section B. As such, there is no ambiguity and the word 'You' means the policy holder or insured. Therefore, the policy does not

give any right to the plaintiff to claim indemnity against the second defendant as he is neither the policy holder nor the insured. Even if there is any doubt or ambiguity as to the extent of the policy, the contra proferentum rule apply so that the doubt or ambiguity should be construed in favour of the insured (*Central Lorry Service Co Sdn Bhd v The American Insurance Co* [1981] 2 MLJ 40).

[32] Learned counsel also referred to the PIAM Principal Officer's Circular No 187 of 1991 dated 2 September 1991 which provides that insurers have a right to seek reimbursement from the policy holder for the payment of passenger liability which arises in Singapore. Therefore, the right to indemnity is only against the policy holder and not the authorised driver.

[33] In reply to the plaintiff's argument on restitution, learned counsel for the second defendant submitted that this point was not raised at the High Court or in the memorandum of appeal. Further, it was submitted that the plaintiff's argument is premature and pre-emptive because the plaintiff has to date not been compelled by law to pay, or being compellable by law, has paid money on Zuraini's claim. As such, it is unfair on this court to make a decision on this point.

[34] In view of the aforesaid submission of the parties, it would be useful to appreciate the background of the special agreement.

WHAT IS THE SPECIAL AGREEMENT?

[35] Briefly stated, the narrative begins with the setting up of the Motor Insurers' Bureau ('MIB') on 15 January 1968 premised on an agreement between MIB and the Minister of Transport; the 1968 agreement was superseded by a second agreement entered between the MIB and the Minister of Transport on 9 January 1992 ('the principal agreement'). The MIB is a social scheme established as a central fund financed by all motor insurers to provide compensation to all road traffic accident victims who were unable to recover any compensation due to no effective insurance policy to cover the liability. In 1975, Singapore set up its own motor insurers' bureau ('MIBS') which is modelled on the MIB; the MIBS and the MIB are similar except that the MIB does not cover cases of untraced drivers ('hit and run' cases).

[36] Subsequently, the MIB entered into individual agreements with insurers in Singapore who were not licensed to conduct insurance business in Malaysia. Under these agreements, insurers in Singapore agreed to be bound by the articles of association of the MIB and the principal agreement. It is also agreed that the Singapore insurer of the motor vehicle will reimburse the MIB

if MIB has to pay any claim due to the negligent use of Singapore registered motor vehicles in Malaysia.

[37] Similar agreements were entered into between insurers in Malaysia who were not registered in Singapore and the MIBS whereby insurers in Malaysia agreed to be bound by the articles of association of the MIBS and the agreement between the MIBS and Singapore Minister for Finance ('Singapore principal agreement'). Consequently, under these agreements the Malaysian insurer of the motor vehicle is obliged to reimburse the MIBS if MIBS pays on any claim due to the negligent use of Malaysia registered motor vehicles in Singapore. In the context of this appeal, such an agreement between a Malaysian insurer and the MIBS is referred to as the special agreement.

[38] Pursuant to this reciprocal arrangement between the MIB and the MIBS, the MIBS will have to meet any judgment that is unsatisfied by a tortfeasor using a Malaysian registered motor vehicle entering into Singapore without any insurance cover. Conversely, the MIB will also have to meet any liability in respect of any Singapore registered motor vehicle entering into Malaysia without any insurance cover.

DECISION OF THE COURT OF APPEAL

The estoppel issue

[39] At the outset, we shall deal with the preliminary question of whether by the plaintiff's conduct in appointing GLA to defend the second defendant in the Singapore suit, it has by such conduct waived the right to deny liability on the policy and is estopped from maintaining the action.

[40] It is not a disputed fact that that Zuraini instituted the Singapore suit against her husband, the second defendant and the driver of the other motor vehicle on 31 January 2013 and that the plaintiff appointed GLA to represent the second defendant in the proceedings.

[41] The learned judge found that GLA had taken various steps in defending the second defendant in the Singapore suit including entering a memorandum of appearance, taking instructions from the second defendant, filing the statement of defence, writing to other solicitors and liaising with the second defendant on the conduct of the proceedings. As such, the learned judge held that the plaintiff is estopped from maintaining the action as it had waived its right to deny liability under the policy by reason of its conduct in having appointed GLA to act for the second defendant in the Singapore suit even though it was aware that the policy does not cover passenger liability.

[42] In *Soole v Royal Insurance Company Ltd*, the insurers had taken control and conduct of the defence of the insured and later denied liability under the policy. The English High Court held that the assumption of control of the proceedings by the insurers did not necessarily imply a representation by the insurers that they regard the claim as one which must give rise to a liability to indemnify the insured. Accordingly, the assumption of proceedings by the insurers did not necessarily debar them from subsequently denying liability.

[43] The aforesaid view found support in *MacGillvray on Insurance Law* (10th Ed, Sweet and Maxwell 2003) where the learned authors had this to say:

> It is submitted with respect that the decision in Soole correctly represents the English law. There is good authority for the proposition that an estoppel requires:
>
> (i) a clear representation by word or conduct of a present fact,
>
> (ii) made to someone who is expected to act on it, and
>
> (iii) who does so, to his 'detriment'. The insurers' conduct did not constitute a clear representation that they would meet the claim, and it could not be so construed as a matter of law. The assured was in no way prejudiced, ...

[44] In the Hong Kong Court of Appeal case of *The Oriental Fire & General Insurance Co Ltd v Cheuk Ma Yee* [1980] HKCA 291; [1980] HKC 32 CACV 75/1980 (19 December 1980), the deceased was a passenger who was killed in a motor accident in a motor car owned and driven by one Lau Koon Ki. The administrator of the deceased's estate sued Lau Koon Ki ('the accident suit'). The insurer defended the accident suit against Lau Koon Ki the insured in the name of the insured as permitted by the motor policy. Judgment was entered against Lau Koon Ki. Lau Koon Ki was unable to satisfy the judgment and was adjudicated a bankrupt. Subsequently, the administrator brought an action against the insurer for an indemnity granted to Lau Koon Ki under the motor policy. The insurer repudiated liability on the basis that the insured had been in breach of certain terms in the policy. The High Court held that the insurer is not entitled to defend the accident suit in the insured's name without abandoning its right to repudiate liability under the policy. The Hong Kong Court of Appeal disagreed with the High Court. At para 36 of the judgment, McMullin VP said:

> What is fundamental to the judge's findings in relation to both pleas is this contention that the insurance company is not entitled to defend the action in the plaintiff's name without thereby abandoning its right to repudiate liability in respect of its indemnity to the insured. This is in effect asserting that by taking over the defence the insurer must be held to have elected to waive the breach. However I cannot see that taking over the defence is inconsistent with asserting that the insurer is in any event not liable. The insurer is surely entitled to say 'We affirm the policy but repudiate liability for this particular claim. However in the event that we may be held liable, we take over the defence and will conduct it with due regard to

the insured's interest. The conclusion of the learned judge in this case is of the widest import and we must look carefully at the ground on which it is supported.

[45] In *Chong Kok Hwa v Taisho Marine & Fire Insurance Co Ltd* [1977] 1 MLJ 244 the insurer had taken over conduct of the proceedings in the action instituted by the injured third party against Chong Kok Hwa (the insured). The insurer defended the suit and paid RM3,250 as damages and costs to the third party under a consent judgment. Subsequently, the insurer brought an action against the insured to recover the said sum from the insured on the ground that they had repudiated liability on the policy because the insured had only given notice of the accident to the insurer one year after the accident. The sessions court gave judgment for the insurer; the insured appealed to the High Court against the sessions court decision. In dismissing the appeal, Ajaib Singh J (as he then was) said at p 247:

> When they took over the conduct of the proceedings in the action instituted by the injured third party against the appellant and settled the action without contest the respondents were merely exercising their rights under the policy. In no sense could it be said that the respondents had thereby waived any express condition in the policy especially when they had warned the appellant that he would be held responsible for any third party claim which might be made against them Arising out of the accident involving his lorry.

[46] *Chong Kok Hwa v Taisho Marine & Fire Insurance Co Ltd* was also cited in Poh Chu Chai, *Law of Insurance* (3rd Ed) in support of the proposition that the conduct of the insurer in taking over the action from the insured cannot be construed as a waiver of the insured's breach of the terms of the policy.

[47] In this instance, GLA was acting in the interests of the second defendant when acting for the second defendant in the Singapore suit. We agree with the submission of the plaintiff's learned counsel that there is a commonality in the interest of the plaintiff and the second defendant. The common interest in this instance was to avoid the possibility of judgment by default and to argue that the driver of the other vehicle was solely or mainly liable for the accident. There is no suggestion that GLA in any way acted contrary to the interest of the second defendant. As such, we hold the view that there is no conflict of interest in acting for both insured and insurers.

[48] The plaintiff's contention that from the outset they made it clear to the second defendant that they were doing without prejudice to their right to deny policy liability is denied by the second defendant. At any rate, GLA eventually discharged itself as the second defendant refused to accept GLA's position that their continued involvement was without prejudice to liability. We do not think that the contested fact as to whether the plaintiff did express a reservation of right prior to 27 September 2013 is a determining factor on this issue. We

observe that neither *Soole* nor *Oriental Fire* regard reservation of right as a critical element.

[49] We have scrutinised the appeal record and find no evidence to show or suggest that the second defendant had acted to his detriment by virtue of GLA being appointed by the plaintiff to act for the second defendant in the Singapore suit. Accordingly, we do not agree with the learned judge that the plaintiff has by its conduct waived its right to deny liability on the policy and is estopped from maintaining the action.

DECLARATION B

[50] Declaration B relates to the policy liability of the plaintiff to Shahrul as the insured and to the second defendant as the authorised driver. Notwithstanding the fact that GLA had taken conduct of the second defendant's defence in the Singapore suit, the plaintiff had denied liability to the second defendant under the policy on the ground that the policy does not cover third party passenger liability.

[51] On this issue, the second defendant's argument is that the policy refers to the special agreement. The policy and the special agreement are intrinsically linked although liability stems largely from the special agreement, the special agreement cannot kick in without the policy. In other words, learned counsel for the second defendant's point is that even if the plaintiff is not liable under the policy, the plaintiff is still liable under the special agreement.

[52] It is not disputed that passenger liability is not covered under the policy and that the second defendant drove the motorcar into Singapore without cover for passenger liability.

[53] The fact that the second defendant had no knowledge of the policy's non-coverage of passenger liability is immaterial. In the first instance, we do not accept the argument that the second defendant who claims the benefit of the policy is not bound to take it as he finds it. The second defendant must take it with all its disadvantages from his point of view, together with its advantages, and he cannot claim the benefit of anything which the policy gives him without complying with its terms. Secondly, we do not think that the second defendant can pick and choose and pick out that part of the policy which suits him and omit that part of the policy which does not suit him. Third, it is a question of: What is the contract between the two contracting parties? Does it contain passenger liability cover? The policy does not cover passenger liability. Accordingly, the second defendant, the authorised driver must take the policy as he finds it (see *Austin v Zurich General Accident & Liability Insurance Co Ltd* [1945] 1 All ER 316, (CA)).

[54] In her judgment, the learned judge relied on the Singapore High Court case of *Pacific & Orient Insurance Co Bhd (formerly known as Pacific & Orient Insurance Co Sdn Bhd) v Motor Insurers' Bureau of Singapore* [2013] 1 SLR 341 in support of her finding that the plaintiff is liable to satisfy the judgment obtained by Zuraini a passenger of Malaysian registered vehicle for the accident which occurred in Singapore; even though the policy does not cover passenger liability.

[55] In that case, the Singapore High Court considered the question of whether P&O insurance, which is an insurer based in Malaysia, is liable to satisfy a Singapore judgment obtained by an injured pillion rider against its policy holder who is the rider of the motorcycle, in a traffic accident which occurred in Singapore; which question is contingent upon the obligations which P&O insurance has undertaken under the special agreement with MIBS. P&O insurance, who had issued a policy on the motorcycle had disclaimed liability on the ground that the insured had not taken out any insurance for pillion rider cover.

[56] In essence, the Singapore High Court ruled that on a true and proper construction of the Singapore principal agreement, the special agreement, the domestic agreement and the terms of P&O insurance's motor insurance policy, P&O insurance is obliged to satisfy the Singapore judgment obtained by the pillion rider. Further, it was held that if MIBS is to satisfy the said judgment, MIBS is entitled to be indemnified by P&O insurance for all amounts, costs and interest paid on the judgment. The decision of the Singapore High Court was affirmed by the Singapore Court of Appeal.

[57] It is also pertinent to note that there is a clear distinction between the plaintiff's liability under the policy as against the plaintiff's liability under the special agreement.

[58] The plaintiff's liability under the special agreement only arises if: (a) Zuraini obtains judgment on her claim against the second defendant in the Singapore suit, and (b) MIBS pays on the judgment sum. This issue was determined in *Pacific & Orient Insurance Co Bhd (formerly known as Pacific & Orient Insurance Co Sdn Bhd) v Motor Insurers' Bureau of Singapore*. However, that is not the issue in this appeal. The issue here is whether the plaintiff is legally liable under the policy to the Shahrul and or the second defendant for injuries, loss and damages suffered by Zuraini. The plaintiff's liability under the special agreement arises only in Singapore under this compulsory arrangement made in Singapore. Further, we do not think that the special agreement has any effect on the plaintiff's rights under the policy; the special agreement does not affect or alter the rights under the policy inter se the plaintiff qua insurer, Shahrul qua insured and the second defendant qua

authorised driver. Accordingly, we hold that the plaintiff's rights under the policy are therefore preserved. The exclusion of third party coverage for passengers other than employees under the policy is preserved.

[59] For the foregoing reasons we are unable to agree with the learned judge's findings that the plaintiff is liable to satisfy any judgment for damages obtained by Zuraini in the Singapore suit against the second defendant as the plaintiff is liable under the policy to the second defendant as the authorised driver. Accordingly, we take the view that declaration B should be allowed.

DECLARATION D

[60] We now turn to declaration D which relates to the question of whether the plaintiff is entitled to recover an indemnity from the second defendant for the amounts which the plaintiff is required to pay under the compulsory arrangements. The right to recover an indemnity only arises if the plaintiff is found liable under declaration A (see para 13 above).

[61] In the light of our ruling: (a) that there is clear distinction between the plaintiff's liability under the policy as against the plaintiff's liability under the special agreement, and (b) that the rights of the insurer and insured under the policy are thereby preserved and protected, it follows that the question of whether the second defendant is liable to indemnify the plaintiff from any such liability should be determined according to the terms of the policy.

[62] In this case, it is common ground that the motorcar in question was driven by the second defendant who was duly authorised to drive the said motor car by Shahrul.

[63] We note that under para (1) of 'Section B: Liability to Third Parties' of the policy, the plaintiff qua insurer will treat the insured's authorised driver as though he is the insured. Further, under para 1(b), it is also provided that the authorised driver is required to comply with the terms of the policy insofar as they are applicable to him.

[64] It is settled law that where an authorised driver comes within the terms of the policy, the effect of the clause extending cover to an authorised driver is to create a second contract of insurance between the plaintiff qua insurer and the authorised driver. It has been postulated that this second or separate contract of insurance between the insurer and the authorised driver is only a notional contract (S Santhana Dass, *The Law of Motor Insurance* at p 633 (Marsden Law Book 2010)).

[65] Accordingly, we hold that the words 'you, your, yourself, policy holder

and insured' in the policy should be construed to be read, as far as they can apply beyond the insured, as meaning the insured or any other person who is insured under the policy. In *Digby v General Accident Fire and Life Assurance Corporation Ltd*, the principle was invoked by the majority judgment of the House of Lords so as to entitle an authorised driver to be indemnified against damages awarded against him. At p 329 of the judgment, Lord Atkin (read by Lord Wright) said:

> The operation of the insured may change under the operation of cl 3, and in like manner the identity of the third party, in facts like those in question, may change. The policyholder thus may become under cl 3 the third party to whom the new insured, the chauffeur, has become liable. The policy, in its primary import, is no doubt a single insurance for the benefit of a single insured; but cl 3 involves that it may during its currency cover a new insured, in place for the time of the original insured, if the circumstances postulated by cl 3 comes into effect.
>
> The new insured, it is to be noted, is by the terms of cl 3 to 'observe fulfil and be subject to the terms exceptions and conditions of the policy so far as they apply.' Thus he is bound by condition 8, the arbitration clause, as the Court of Appeal, agreeing with the court below, held. In other words, throughout the conditions 'policyholder' has to be read, so far as they can apply beyond the policyholder as meaning 'policyholder or any other person who is insured by virtue of s 2(3).' Thus, for instance, condition 1 (notices), condition 2 (claims and legal proceedings and their conduct) would apply to such a person. Condition 6 (contribution if there is another insurance) would it seems, not so apply because cl 3 is subject to the proviso that there is to be no other insurance subsisting under which such other person may be indemnified. Conditions 3 and 5 are also conditions which would not apply to any insured other than the policyholder.
>
> This short point of construction to my mind concludes the matter. I find nothing in the rest of the policy inconsistent with that meaning.

[66] There is, however, a distinction between *Digby*'s case and the appeal before us. In *Digby*'s case, there was no issue of policy coverage whereas in the present case third party liability to passengers is expressly excluded. Further, there is an express clause which requires the insured or the authorised driver to repay any monies which the insurer is required to pay by virtue of the special agreement (para 2 under sub-head 'Avoidance of Certain Terms and Rights of Recovery, Section B: Liability to Third Parties' of the policy).

[67] The principle enunciated in *Digby*'s case was applied in *Manap bin Mat v General Accident Fire & Life Assurance Corpn Ltd* where the Singapore Court of Appeal held at para 14 in p 7:

> In the policy we are considering, there are clauses and conditions similar to the ones considered and referred to by Lord Wright, ([13]) and we are similarly of the view that in this policy of insurance throughout the conditions 'insured' has to be read, so far as they can apply beyond the insured as meaning 'insured or any other person

who is insured by virtue of cl 2 of s II'. On this view, condition 8 would apply to such a person, not only to the extent that such a person would be bound to submit to arbitration but also, in our opinion, the words 'shall disclaim liability to the insured' has to be read as meaning 'shall disclaim liability to the insured or any other person who is insured by virtue of cl 2 of s II.

[68] In *Dato' Othman bin Hashim v KKW Auto Centre*, the High Court applied both *Digby*'s case and *Manap*'s case to hold that the authorised driver should be deemed to be an insured under the policy and that as a result the insurer would not be entitled to exercise subrogation rights under it.

[69] In *Austin v Zurich General Accident & Liability Insurance Co Ltd*, Lord Greene MR emphasised that an authorised driver is bound by the terms of the policy and must follow the same if he is to get any benefit under the policy. There is no excuse if the authorised driver did not know the terms of the policy.

[70] For the foregoing reasons, we do not agree with the decision of the learned judge that the plaintiff is not entitled to an indemnity from the second defendant.

[71] We will now address the plaintiff's argument that the plaintiff has a right of restitution and under s 70 of the Contracts Act 1950 in the event the plaintiff is compelled to pay on the judgment in the Singapore suit being obtained against the second defendant under the special agreement. This point was not pleaded, nor was it raised in the High Court or pleaded in the memorandum of appeal before us. We agree with the submission of learned counsel for the second defendant that the plaintiff should not and cannot now be allowed to raise the issue of restitution which was never pleaded in the pleadings (*Ambank (M) Bhd (formerly known as Arab-Malaysia Bank Bhd) v Luqman Kamil bin Mohd Don* [2012] 3 MLJ 1 (FC) *RHB Bank Bhd (substituting Kwong Yik Bank Bhd) v Kwan Chew Holdings Sdn Bhd* [2010] 2 MLJ 188 (FC) *Veronica Lee Ha Ling & Ors v Maxisegar Sdn Bhd* [2011] 2 MLJ 141 (FC) *Minister of Energy, Water and Communications & Anor v Malaysian Trade Union Congress & Ors* [2013] 1 MLJ 61 (CA) *Malaysia Land Properties Sdn Bhd v Waldorf & Windsor Joint Management Body* [2014] 3 MLJ 467 (CA)).

CONCLUSION

[72] In conclusion, we allow the declarations in prayers (b) and (d) of the amended statement of claim dated 13 April 2014. The decision of the High Court dated 28 November 2014 is set aside. Consequently, the appeal is allowed with costs.

Appeal allowed with costs.

Reported by Afiq Mohamad